

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 22-81:

TOWNSEND EDUCATION ASSOCIATION,

Complainant,

- vs -

BROADWATER COUNTY SCHOOL
DISTRICT NO. 7,

Defendant.

FINAL ORDER

No exceptions having been filed, pursuant to ARM 24.26.215,
to the Findings of Fact, Conclusions of Law and Recommended
Order issued on March 18, 1982, by Hearing Examiner Jack E.
Calhoun:

THEREFORE, this Board adopts that Recommended Order in this
matter as its FINAL ORDER.

DATED this 25th day of April, 1982.

BOARD OF PERSONNEL APPEALS

By John Kelly Adley
John Kelly Adley
Chairman

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy
of this document was mailed to the following on the 22 day
of April, 1982:

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James J. Anderson

file

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STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS
IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 22-81:

TOWNSEND EDUCATION ASSOCIATION	}	FINDINGS OF FACT, CONCLUSION OF LAW AND RECOMMENDED ORDER
Complainant,		
vs.		
BROADWATER COUNTY SCHOOL DISTRICT NO. 7,		
Defendant.		

I. INTRODUCTION

On May 20, 1981, Complainant filed an unfair labor practice charge alleging Defendant had violated section 39-31-401(5) MCA by refusing to arbitrate a contract grievance. Defendant denied that it had committed any violation. At a pre-hearing conference held on October 19, 1981 the parties agreed to attempt to stipulate to the relevant facts involved. A stipulation and briefing schedule were filed on December 17, 1981. The last brief was filed on February 4, 1982. Complainant is represented by Ms. Emilie Loring, Defendant by Mr. Chadwick Smith.

II. ISSUES

The issues listed below are those stipulated to by the parties:

1. Whether the Board of Personnel Appeals has jurisdiction of the subject matter stated in the charge or complaint filed herein and whether the charge and the preceding stipulation of facts state an unfair labor practice charge under section 39-31-401(5) MCA.
2. Whether the non-renewal of a non-tenure teacher's teaching contract is a grievance as defined in the collective bargaining agreement.
3. Whether the collective bargaining agreement provides

1 for the binding arbitration of grievances.

2 4. Whether the defendant school board may submit to
3 binding arbitration the matter of possible violation of the
4 due process clause of the collective bargaining agreement in
5 the non-renewal of non-tenure teacher Donna Downs' teaching
6 contract.

7 5. Whether submission to such arbitration is an
8 unlawful delegation of the school board's lawful power, duty
9 and obligation.

10 III. FACTS

11 The following facts were stipulated to by the parties:

12 1. The Townsend Education Association, affiliated
13 with the Montana Education Association is the duly recognized
14 exclusive representative for collective bargaining of the
15 faculty employed by defendant in the Townsend schools.

16 2. Defendant, Broadwater County School District #7, a
17 body corporate of the State of Montana, operates the elementary
18 school in Townsend, Montana.

19 3. The parties have a collective bargaining agreement,
20 Exhibit A.

21 4. On March 10, 1981, the Board of Trustees of the
22 defendant voted unanimously not to renew the teaching contract
23 of Donna Downs for the 1981-1982 school year because "a
24 better teacher can be obtained." Donna Downs was present at
25 the meeting, having been notified by letter that the matter
26 of her re-election for the 1981-82 school year would be
27 determined at that time, Exhibit B.

28 5. Donna Downs, a non-tenure teacher in the elementary
29 school, was notified on March 11, 1981, that her teaching
30 contract would not be renewed for 1981-82, Exhibit C.

31 6. Downs requested the reasons for the non-renewal on
32 March 19, 1981, Exhibit D.

1 7. Superintendent Knodel, on behalf of defendant,
2 supplied the reason on March 20, 1981, Exhibit E.

3 8. An alleged grievance was filed on March 20, 1981
4 by the Townsend Education Association on behalf of Donna
5 Downs, Exhibit F. The matter was handled by Sean Mathews,
6 an MEA staff representative.

7 9. Both the Principal and the Superintendent said the
8 relief requested, issuance of a contract for 1981-1982, was
9 not a decision they could make.

10 10. On April 7, 1981, the Board reaffirmed its decision
11 of March 10, 1981, Exhibit G.

12 11. On April 15, 1981, the MEA requested a list of
13 arbitrators from the Board of Personnel Appeals, Exhibit H.

14 12. On April 21, 1981 BPA Administrator Jensen supplied
15 a list of arbitrators, Exhibit I.

16 13. On April 22, 1981, Superintendent Knodel, on
17 defendant's behalf, requested the BPA to ignore the request
18 for arbitrators, Exhibit J.

19 14. The defendant refused and refuses to submit the
20 alleged grievance to arbitration.

21 15. On May 20, 1981, the Townsend Education Association
22 filed unfair labor practice charges with the Board of Personnel
23 Appeals, alleging the refusal of the defendant to strike
24 names from the list of arbitrators submitted by the Board of
25 Personnel Appeals or to submit the matter to arbitration was
26 a refusal to bargain in good faith.

27 16. On June 2, 1981, Robert R. Jensen, Administrator
28 of the Personnel Appeals Division of the Department of Labor
29 and Industry of the State of Montana notified the Superintendent
30 of Schools at Townsend by letter as follows:

31 Although there is no specific statutory authority for
32 our involvement in this kind of activity, we offer the
services in an effort to help parties resolve their

1 differences. We have no authority to enforce the
2 utilization of the lists nor do we take a position on
3 the appropriateness of the lists when requested by only
4 one party. We assume the parties jointly decide whether
5 to use lists or not.

6 See Exhibit K.

7 17. On June 29, 1981, the defendant filed an Answer
8 denying the unfair labor practice charges and raising the
9 issues listed above.

10 IV. OPINION

11 The stipulated facts acknowledged the existence of a
12 collective bargaining agreement between the parties and
13 referred to exhibit "A." For the convenience of the reader
14 the two provisions of the contract relevant here are quoted
15 below:

16 ARTICLE IV, TEACHER RIGHTS. . . 4.2 No teacher shall
17 be disciplined, reprimanded, reduced in rank or compensa-
18 tion, discharged, or deprived of any professional
19 advantage without due process. Any such assertion by
20 the Board, or any agent or representative thereof shall
21 be subject to the grievance procedure herein set forth.

22 ARTICLE VI, GRIEVANCE PROCEDURE . . . 6.4 Procedure . . .
23 . F. Level Four. If the grievance has not been satisfac-
24 torily resolved at the Third Level, the grievance may
25 be filed with the Board of Personnel Appeals.

26 A number of issues were raised by the parties in their
27 stipulation; however, whether most of them should be addressed
28 depends on whether the parties' collective bargaining agreement
29 provides for final and binding grievance arbitration.

30 If the contract compels the parties to settle their
31 differences by submitting to arbitration, then a refusal to
32 do so is tantamount to a refusal to bargain in good faith and
33 is an unfair labor practice under 39-31-401(5) MCA. City of
34 Livingston v. Montana Council No. 9, AFSCME, 174, Mont. 421,
35 571 P. 2d 374 (1977). Therefore, it is necessary to examine
36 the contract to determine whether it provides for final and
37 binding grievance arbitration.

38 The collective bargaining agreement in the present case

1 does not contain a "standard" arbitration provision. After
2 listing in Article IV certain actions by the employer which
3 may not be taken without due process, the contract goes on
4 to provide that assertions to the contrary by the school
5 board will be subject to the grievance procedure. The
6 grievance procedure is comprised of four levels. Level one
7 requires that the teacher with the grievance discuss it with
8 the principal. Level two provides that it may be referred
9 to the Superintendent who will arrange for a hearing with
10 the teacher and/or the association. At level two the parties
11 have the right to be represented and to call witnesses,
12 after which the Superintendent must provide his written
13 decision and the reasons therefore to the association. At
14 level three the grievance is to be filed with the school
15 board where the parties, their representatives and the
16 Superintendent meet with the board or its designated commit-
17 tee to resolve the matter. Level four provides that the
18 grievance may be filed with the Board of Personnel Appeals
19 if it is not resolved at level three.

20 Complainant argues that the final step in the contract
21 grievance procedure reflects the parties intent to obtain a
22 list of arbitrators from this Board because, it is urged,
23 that is the only interpretation of the clause that makes any
24 sense. In effect this Board is asked to read into the
25 language of the contract a final and binding arbitration
26 requirement. However, there are other conclusions which one
27 could logically draw from reading the agreement.

28 The parties may well have thought that the Board of
29 Personnel Appeals had jurisdiction, that when the grievance
30 was filed a mediator or fact-finder would be sent in to
31 assist the parties in resolving their dispute, or that they
32 could bestow jurisdiction on the Board. The number of

1 possibilities as to what they may have intended is limited
2 only by the amount of time one spends engaging in specula-
3 tion. The language used could also have been the result of
4 a bargaining compromise where the teachers settled for
5 something less than arbitration as the quid pro quo for
6 something else; greater wages, for example. In any case,
7 absent a clearer provision on the subject, I cannot read
8 arbitration into the procedure. The absence of the words
9 "arbitrate" or "arbitration" could lead one to conclude that
10 the omission was by design. Any other interpretation would
11 seem to suggest that one party, or both, did not know the
12 significance of a clearly stated arbitration clause.

13 Since there is nothing in the stipulated facts to
14 indicate the parties intended to arbitrate their differences
15 during the term of the agreement, I conclude there was no
16 obligation on the part of Defendant to participate in an
17 arbitration process. The collective bargaining agreement
18 does not provide for the arbitration of grievances; therefore,
19 the refusal by Defendant to submit the matter to an arbitrator
20 was not a failure to bargain in good faith.

21 Having found that the stipulated facts do not state an
22 unfair labor practice because the contract does not provide
23 for the arbitration of grievances, it is not necessary to
24 address the questions raised in issues Nos. 2, 4 and 5.

25 V. CONCLUSION OF LAW

26 Defendant did not violate 39-31-401(5) MCA by refusing
27 to submit the contract dispute to arbitration.

28 VI. RECOMMENDED ORDER

29 There being no violation found, this unfair labor
30 practice charge is dismissed.

VII. NOTICE

Exceptions to these Findings of Fact, Conclusion of Law and Recommended Order may be filed within twenty days of the date of service. If no exceptions are filed within such time, this recommended order shall become the final order of the Board of Personnel Appeals. Exceptions should be addressed to the Board of Personnel Appeals, Capitol Station, Helena, Montana 59620.

Dated this 18th day of March, 1982.

BOARD OF PERSONNEL APPEALS


JACK H. CALHOUN
Hearing Examiner

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy of this document was mailed to the following on the 18th day of March, 1982:

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